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Attorneys for Candace Mings-Cohen

**UNITED STATES DISTRICT COURT
 SOUTHERN DISTRICT OF CALIFORNIA**

Candace Mings-Cohen, <p style="text-align: center;">Plaintiff,</p> <p style="text-align: center;">v.</p> <p style="text-align: center;">American Express Centurion Bank,</p> <p style="text-align: center;">Defendant</p>	Case No: '12CV0400 L POR Complaint For Damages Jury Trial Demanded
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INTRODUCTION

- Plaintiff Candace Mings-Cohen, through her attorneys, brings this lawsuit to challenge the actions of Defendant American Express Centurion Bank, with regard to erroneous negative and derogatory reports regarding credit information reported by American Express to national credit reporting agencies, as well as for the negligent and malicious failure of American Express to properly investigate the repeated disputes of Plaintiff concerning the validity of certain alleged debts that American Express claimed was owed American Express by Plaintiff, and the failure of the American Express to

HYDE & SWIGART
San Diego, California

1 correct the derogatory and negative credit information placed in the Plaintiff's
2 credit file by American Express, which American Express knew, or should
3 have known, was erroneous, and which caused Plaintiff damages.

4 2. Plaintiff makes these allegations on information and belief, with the exception
5 of those allegations that pertain to a plaintiff, or to a plaintiff's counsel, which
6 Plaintiff alleges on personal knowledge.

7 3. While many violations are described below with specificity, this Complaint
8 alleges violations of the statutes cited in their entirety.

9 4. Unless otherwise stated, all the conduct engaged in by American Express took
10 place in California.

11 5. Any violations by American Express were knowing, willful, and intentional,
12 and American Express did not maintain procedures reasonably adapted to
13 avoid any such violation.

14 JURISDICTION AND VENUE

15 6. Jurisdiction of this Court arises pursuant to 28 U.S.C. § 1331, 15 U.S.C. §
16 1692(k), and 28 U.S.C. § 1367 for supplemental state claims.

17 7. This action arises out of American Express's violations of the Fair Credit
18 Reporting Act, 15 U.S.C. §§ 1691 et seq. ("FCRA").

19 8. Because American Express does business within the State of California,
20 personal jurisdiction is established.

21 9. Venue is proper pursuant to 28 U.S.C. § 1391.

22 10. At all times relevant, American Express conducted business within the State
23 of California.

24 PARTIES

25 11. Plaintiff is a natural person who resides in the City of Carlsbad, State of
26 California.

27 12. American Express is located in the City of Los Angeles, in the State of
28 California.

13. American Express is a furnisher of information as contemplated by FCRA section 1681s-2(a) & (b), that regularly and in the ordinary course of business furnish information to one or more consumer reporting agencies about consumer transactions or experiences with any consumer.

FACTUAL ALLEGATIONS

14. Prior to 2010 Plaintiff opened two American Express credit cards, which were used by Plaintiff and paid as agreed by American Express over the course of the years.

15. On or about January 8, 2010, American Express, without notifying Plaintiff that there was an issue with her card(s), put a “block” on Plaintiff’s account which denied Plaintiff the ability to make additional purchases.

16. On January 8, 2010, Plaintiff attempted to use one or more of her American Express cards at a retail establishment, and was declined.

17. Frustrated, Plaintiff telephoned American Express, where it was discovered that a billing error had apparently occurred as American Express had not received Plaintiff’s payment. Plaintiff informed American Express that payment had been sent and that there must have been some type of error on the part of American Express. American Express’s representative informed Plaintiff that her spending had increased over the past months and there may be a decrease in Plaintiff’s credit limit.

18. After Plaintiff could not receive appropriate redress from American Express, Plaintiff hung up. Later that same day, Plaintiff called American Express again and a new representative informed Plaintiff of the same information – that her payment had not been received. Plaintiff was informed that American Express had sent Plaintiff notification of this delinquency, but Plaintiff never received any such notification.

19. Plaintiff, asserted by American Express to be a “valued” card member for over twenty years, was frustrated and disappointed by the attitude of

1 American Express in dealing with Plaintiff. As a result, Plaintiff then wrote
2 two checks to American Express, \$6,840.16 and \$5,973.30, respectively
3 which paid her balance in full. Those two checks were sent overnight mail
4 with instructions to close her accounts.

5 20. Those two checks were delivered the next day, by way of Fed Express, on
6 January 13, 2010 at 9:04 a.m. in New York and signed for by a representative of
7 American Express, "R. Feldman."

8 21. Despite American Express receiving these checks to close Plaintiff's
9 accounts, American Express subsequently began reporting Plaintiff's account
10 as delinquent, which seriously damaged Plaintiff's credit standing. These
11 delinquencies were then transferred to one or more of Plaintiff's various
12 credit reports, making the matter worse.

13 22. On or about April 8, 2010, Plaintiff became aware that American Express was
14 now reporting derogatory and inaccurate information on Plaintiff's credit
15 report(s), as Plaintiff began receiving collection letters from collection
16 companies on her now paid American Express accounts. In response, Plaintiff
17 wrote American Express directly, demanding the negative credit reporting
18 information be removed from Plaintiff's credit reports as the accounts had
19 been paid in full and were now closed.

20 23. In response to Plaintiff's written inquiry, on April 13, 2010, American Express
21 sent Plaintiff a letter stating that the checks Plaintiff remitted for payment in
22 full were "inadvertently misplaced, and not credited to [Plaintiff's] account."

23 24. Notwithstanding that American Express had misplaced and mishandled
24 Plaintiff's account, American Express continued to report inaccurate and
25 negative credit reporting information to one or more of Plaintiff's national
26 credit reports.

27 25. To this day, American Express has failed to rectify the inaccurate credit
28 reporting information.

26. On or about July 2010, Plaintiff made a written request to the three major credit bureaus, a/k/a the “Big Three” (Equifax, in Georgia; TranUnion, in Pennsylvania; and Experian, in Texas), in an attempt to have the inaccurate and negative credit reporting items removed from Plaintiff’s credit report(s).
27. Subsequently, the Big Three sent requests for American Express to make an appropriate investigation, as required by the FCRA, into Plaintiff’s claims that she was not late, should not be in collections and that the accounts were paid.
28. In August 2010, after conducting a negligent, and improper, investigation, American Express “verified” that the negative credit reporting information provided to the Big Three and continued to improperly show Plaintiff was delinquent on her closed American Express accounts in excess of 120 days.
29. The above actions by American Express violated 15 U.S.C. §§1681 et seq., including, but not limited to, 15 U.S.C. §§1681s-2, in that American Express failed to adequately investigate or reinvestigate the Plaintiff’s claim that the derogatory information filed was inaccurate and thereafter correct this inaccurate information.
30. Prior to the inaccurate credit reporting by American Express, Plaintiff had stellar credit. Because Plaintiff was in the process of making a large real estate purchase at the time American Express began negatively reporting Plaintiff to all three national credit bureaus, this real estate purchase was hindered based upon American Express’s negative reporting. As a result, Plaintiff suffered considerable damages.
31. As a result of the derogatory information reported by American Express, and in violation of 15 U.S.C. §§ 1681 et seq., Plaintiff abstained from applying for credit, had adverse action taken on existing credit accounts and was denied credit. Plaintiff has sustained actual damages including emotional distress and pecuniary loss.

CAUSES OF ACTION**COUNT I****VIOLATIONS OF THE FAIR CREDIT REPORTING ACT****15 U.S.C. §§ 1681 ET SEQ.**

32. Plaintiff repeats, re-alleges, and incorporates by reference, all other paragraphs.

33. The foregoing acts and omissions of this American Express constitute numerous and multiple violations of the FCRA, including, but not limited to, each and every one of the above-cited provisions of the FCRA, 15 U.S.C. §§ 1681 et seq.

34. As a result of American Express's willful noncompliance of the FCRA, Plaintiff has suffered is entitled to actual damages sustained by Plaintiff or damages of not less than \$100 and not more than \$1,000 pursuant to 15 U.S.C. § 1681n(a)(1)(A); such amount of punitive damages as the court may allow pursuant to 15 U.S.C. § 1681n(a)(2); and, reasonable attorney's fees and costs pursuant to 15 U.S.C. § 1681n(a)(3), from each and every American Express.

35. As a result of American Express's negligent noncompliance of the FCRA, Plaintiff has suffered is entitled to actual damages sustained by Plaintiff pursuant to 15 U.S.C. § 1681o(a)(1); and, reasonable attorney's fees and costs pursuant to 15 U.S.C. § 1681o(a)(2), from American Express.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays that judgment be entered against American Express, and Plaintiff be awarded damages from American Express, as follows:

- an award of actual damages in an amount to be determined at trial or damages of not less than \$100 and not more than \$1,000 pursuant to 15 U.S.C. § 1681n(a)(1)(A) against American Express for each incident of willful noncompliance of the FCRA;

- an award of such amount of punitive damages as the court may allow pursuant to 15 U.S.C. § 1681n(a)(2) against American Express for each incident of willful noncompliance of the FCRA;
- an award of actual damages in an amount to be determined at trial pursuant to 15 U.S.C. § 1681o(a)(1) against American Express for each incident of negligent noncompliance of the FCRA;
- an award of costs of litigation and reasonable attorney's fees pursuant 15 U.S.C. § 1681n(a)(3) and 15 U.S.C. § 1681o(a)(2) against American Express for each incident of noncompliance of the FCRA;
- any other relief that the court deems just and proper.

36. Pursuant to the seventh amendment to the Constitution of the United States of America, Plaintiff is entitled to, and demands, a trial by jury.

Respectfully submitted,

Hyde & Swigart

Date: February 13, 2012

By: /s Joshua B. Swigart
Joshua B. Swigart
Attorneys for Plaintiff

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

I. (a) PLAINTIFFS

Candace Mings-Cohen

(b) County of Residence of First Listed Plaintiff San Diego, CA

(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorney's (Firm Name, Address, and Telephone Number)

Hyde & Swigart

411 Camino Del Rio South Suite 301, San Diego, CA 92108

DEFENDANTS

American Express Centurion Bank, American

County of Residence of First Listed Defendant Los Angeles, CA

(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE
LAND INVOLVED.**'12CV0400 L POR**

Attorneys (If Known)

II. BASIS OF JURISDICTION

(Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff
- ☒ 3 Federal Question (U.S. Government Not a Party)
- ☐ 2 U.S. Government Defendant
- ☐ 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES

(For Diversity Cases Only)

(Place an "X" in One Box for Plaintiff and One Box for Defendant)

- | | PTF | DEF | | PTF | DEF |
|---|----------------------------|----------------------------|--|----------------------------|----------------------------|
| Citizen of This State | <input type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated <i>or</i> Principal Place of Business In This State | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| Citizen of Another State | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated <i>and</i> Principal Place of Business In Another State | <input type="checkbox"/> 5 | <input type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

IV. NATURE OF SUIT

(Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES	
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury CIVIL RIGHTS <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 440 Other Civil Rights	PERSONAL INJURY <input type="checkbox"/> 362 Personal Injury - Med. Malpractice <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability PRISONER PETITIONS <input type="checkbox"/> 510 Motions to Vacate Sentence Habeas Corpus: <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition	<input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 R.R. & Truck <input type="checkbox"/> 650 Airline Regs. <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act IMMIGRATION <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 463 Habeas Corpus - Alien Detainee <input type="checkbox"/> 465 Other Immigration Actions	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input checked="" type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes

V. ORIGIN

(Place an "X" in One Box Only)

- ☒ 1 Original Proceeding
- ☐ 2 Removed from State Court
- ☐ 3 Remanded from Appellate Court
- ☐ 4 Reinstated or Reopened
- ☐ 5 Transferred from another district (specify)
- ☐ 6 Multidistrict Litigation
- ☐ 7 Appeal to District Judge from Magistrate Judgment

VI. CAUSE OF ACTIONCite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):
15 U.S.C. § 1691 et seq.

Brief description of cause:

Unfair Credit Reporting Practices**VII. REQUESTED IN COMPLAINT:**☐ CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23

DEMAND \$

75,001.00+

CHECK YES only if demanded in complaint:

JURY DEMAND: ☒ Yes ☐ No**VIII. RELATED CASE(S) IF ANY**

(See instructions):

JUDGE

DOCKET NUMBER

DATE

SIGNATURE OF ATTORNEY OF RECORD

02/14/2012

s/Joshua B. Swigart

FOR OFFICE USE ONLY

RECEIPT # _____ AMOUNT _____ APPLYING IFP _____ JUDGE _____ MAG. JUDGE _____